IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

NOTICE OF MOTION NO.43 OF 2005

IN

INSOLVENCY PETITION NO.38 OF 1993

Re: A.D.Vaidya & anr. ..Insolvents.

Ex-parte:

Pannalal D. Shah ..Petitioning Creditor.

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Mr.U.J.Desai for Insolvent No.1.

Mr.K.B.Poojari, Official Assignee present.

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CORAM : DR.D.Y.CHANDRACHUD, J.

3rd May, 2005.

P.C. :

This is a Motion for annulment of an order of adjudication under Section 21(1) of the Presidency Towns Insolvency Act, 1909. The Official Assignee has filed his report dated 30th April, 2005. The report of the Official Assignee states that the Second Insolvent has filed his personal schedule of assets and liabilities

according to which an amount of Rs.7,64,365/- is due to 23 unsecured creditors whereas an amount of Rs.98,000/- is due to secured creditors. Of the 23 unsecured creditors, 15 have filed their affidavits of claim. 14 of those claims have been admitted. 8 creditors have not filed their respective affidavits of claim with the Official Assignee. The Reserve Bank of India was a secured creditor and it has been stated that the claim of this secured creditor has been fully satisfied by a sale of a residential flat. The Assignee has declared a dividend of 0.40 paise in a rupee on 30th November, 2001 on the proved unsecured liability in the amount of Rs.5,11,713/- due to 14 creditors. The Official Assignee has noted that the Second Insolvent has filed original receipts/letters issued by 12 creditors whose claims have been fully satisfied. There are claims of two creditors viz. (i) Ravikiran Urban Co-operative Bank and (ii) Vinkar Sahakari Bank which banks are in liquidation. The residual claim of the aforesaid banks is in the amount of Rs.21,710/- for which provision will have to be made together with interest. The Official Assignee has received from the ex-employer of the Insolvent a sum of

Rs.5,14,514.99 towards gratuity, ex-gratia and group insurance payable under the early retirement scheme to the Insolvent.

The Assignee has stated that at present a sum of Rs.5,62,141.84 is lying to the credit of the estate of Insolvent No.2 in the hands of the Assignee. In the circumstances, the report of the Official Assignee states that there should be no objection to the grant of prayer clause (a) of the Motion. Having heard counsel for the Insolvent and perused the record including the report of the Assignee, I am of the view that there is no reason why an order of annulment in terms of prayer clause (a) should not be granted. Prayer clause (a) of the Motion is accordingly allowed. In so far as prayer clauses (b) and (c) are concerned, a provision is required to be made in the amount of Rs.46,517.64, towards meeting the residual claim of Ravikiran Urban Co-operative Bank Ltd. (Rs.34,230.62) and Vinkar Sahakari Bank Limited (Rs.12,287.02). The Official Assignee is permitted to retain the amount in the estate account of Insolvent No.2 for a period of one year and if by the aforesaid date the amount is not claimed by the

bank, permission is granted to the Official Assignee to transfer the amount to the Unclaimed Dividend Revenue Account under the provisions of Section 122 of the Presidency Towns Insolvency Act, 1909 read with Rule 178 of the Bombay Insolvency Rules, 1910. The Official Assignee has stated that no further commission is recoverable from the Insolvent in the event the order of adjudication is annulled. In so far as the refund of surplus to the Second Insolvent as prayed in prayer clause (d) is concerned, prayer is allowed, subject to the Insolvent and his well wishers furnishing an indemnity bond in favour of the Official Assignee indemnifying the Official Assignee against any claim or demand that may be made by any of the unsecured creditors who have not filed their claim to the Official Assignee. The Motion is accordingly disposed of.